



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JUN 18 2007

Shane Novak, Treasurer
Green Party of Luzerne County, PA
308 Spring Street
Hanover Township, PA 18706

RE: MUR 5783
Green Party of Luzerne County, PA

Dear Mr. Novak:

On August 9, 2006, the Federal Election Commission notified the Green Party of Luzerne County, PA ("Committee") and you, in your official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to the Committee at that time.

On May 9, 2007, the Commission found reason to believe that the Committee and you, in your official capacity as treasurer, violated 2 U.S.C. § 441a(a)(1) by making excessive in-kind contributions. The Commission also found reason to believe that the Committee and you, in your official capacity as treasurer, violated 11 C.F.R. § 106.6(b)(1)(i) by improperly allocating administrative expenses attributable to one or more clearly identified federal candidates or, in the alternative, violated 11 C.F.R. §§ 102.5(a), 106.6(a), (c), and (e).

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath.

In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address, and telephone number

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of such counsel, and authorizing such counsel to receive any notification or other communications from the Commission.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Jin Lee, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Robert D. Lenhard
Chairman

Enclosures

Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

MUR 5783

Respondents: Green Party of Luzerne County, PA and Shane Novak, in his official capacity as treasurer

I. INTRODUCTION

William R. Caroselli alleges that the Green Party of Luzerne County, PA and Shane Novak, in his official capacity as treasurer ("GPL"), Carl Romanelli for U.S. Senate and Shane Novak, in his official capacity as treasurer ("the Romanelli Committee"), and Carl J. Romanelli violated the Federal Election Campaign Act of 1971, as amended ("the Act"). Specifically, the complaint asserts that GPL was created and operated as a way to funnel earmarked contributions to the Romanelli Committee by financing ballot access initiatives for Romanelli, and that GPL and the Romanelli Committee violated the Act by making and knowingly receiving excessive contributions.

As discussed in more detail below, the Commission finds reason to believe that the Green Party of Luzerne County, PA and Shane Novak, in his official capacity as treasurer, violated 2 U.S.C. § 441a(a)(1) by making excessive in-kind contributions. The Commission also finds reason to believe that Green Party of Luzerne County, PA and Shane Novak, in his official capacity as treasurer, violated 11 C.F.R. § 106.6(b)(1)(i) by improperly allocating administrative expenses attributable to one or more clearly identified federal candidates or, in the alternative, violated 11 C.F.R. §§ 102.5(a), 106.6(a), (c), and (e) by failing to use a minimum 50% allocation ratio and to pay allocable expenses from an allocation account or from the committee's federal account with reimbursement by the nonfederal account.

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II. FACTUAL SUMMARY

GPL is a nonconnected committee without multicandidate or party committee status. Although GPL attempted to register with the Commission as a subordinate committee of the Green Party, it is an affiliate of the Green Party of Pennsylvania ("GPPA"), which has not requested qualification as a state party committee.¹ GPL registered with the Commission on May 25, 2006, and, between June 6 and June 20, 2006, received contributions totaling \$66,000 from 20 people who contributed in amounts ranging from \$1,000 to \$5,000.

This matter concerns how GPL raised, spent and reported these funds. GPL appears to have spent part, if not all, of the \$66,000 for ballot qualification efforts on behalf of Carl Romanelli, the Green Party candidate in the 2006 Pennsylvania U.S. Senate race.² Between June 8 and 26, 2006, GPL made four payments to JSM, Inc., a for-profit petition contractor based in Florida, for ballot qualification efforts, and it reported these payments three different ways in three versions of its 2006 July Quarterly Report.

DATE	EVENT
07/17/06	GPL filed its initial July Quarterly Report, reporting the \$66,000 on Schedule B as itemized disbursements to JSM for ballot qualification for Carl Romanelli for U.S. Senate in the amounts of \$24,000 on 06/08/06; \$10,000 on 06/14/06; \$20,000 on 06/22/06; and \$12,000 on 06/26/06.
07/18/06	Carl Romanelli for U.S. Senate filed its initial July Quarterly Report showing in-kind contributions from GPL totaling \$66,000 in amounts and dates that correspond with the ballot qualification payments disclosed by GPL.

¹ See Green Party of Pennsylvania, Affiliates, at <http://www.gppa.org/index.php?module=Affiliates> (last visited Apr. 14, 2007). But see Interview by Amy Goodman with Carl Romanelli, available at <http://www.democracynow.org/article.pl?aid=06/10/31/150227> (Oct. 31, 2006) (stating that the GPL is not part of the state Green Party).

² Pennsylvania law required Romanelli to obtain signatures from at least 67,070 registered voters to qualify for the general election ballot as a minor party candidate. See Gina Passarella, *PA Supreme Court Denies Romanelli's Bid to Get on Ballot*, LEGAL INTELLIGENCER, Oct. 4, 2006, at 3; see also 25 PA. STAT. ANN. § 2911 (2006). Although Romanelli collected approximately 99,000 signatures, the Pennsylvania Supreme Court ruled that the number of valid signatures fell 9,000 short of the total and removed his name from the November ballot. See *Green Party Candidate Is Off November Senate Ballot*, ROLL CALL, Oct. 5, 2006.

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Factual and Legal Analysis (Green Party of Luzerne County, PA)

DATE EVENT

08/01/06 Complaint filed in MUR 5783.

08/25/06 GPL filed a paper copy of an amended July Quarterly Report, reporting the \$66,000 on Schedule F as coordinated party expenditures on behalf of Romanelli and four House candidates, Dave Baker, Titus North, Greta Browne, and Derf Maitland, in the amount of \$13,200 each; GPL attached bank records to this report showing four checks from bank accounts at Bank of America and First Liberty Bank & Trust corresponding to the amounts and dates of the payments to JSM reported in its initial July Quarterly report.

Carl Romanelli for U.S. Senate filed an amended July Quarterly Report, reporting a \$13,200 contribution from GPL with the notation that this was for authorized federal petitioning in the form of a coordinated party expenditure and a \$13,200 disbursement to GPL for a petition drive and voter outreach.

08/27/06 GPL electronically filed its amended July Quarterly Report.

09/15/06 Request for Additional Information ("RFAI") sent stating that GPL must be authorized to make coordinated party expenditures by the state or national committee of its political party; the RFAI requested clarifying information about the designating committee and noted that GPL disclosed no payments for administrative expenses in its amended July Quarterly Report.

10/16/06 GPL filed another amended July Quarterly Report, reporting the \$66,000 on line 21 as allocable operating expenditures (\$4,620 federal and \$61,380 nonfederal) and on Schedule H4 as administrative expenses for ballot access:

Payee	Date	Amount	Federal	Nonfederal	Ratio
JSM, Inc.	08/30/06	\$13,200	\$880	\$12,540	5/95
JSM, Inc.	08/30/06	\$13,200	\$1,980	\$11,220	15/85
JSM, Inc.	08/30/06	\$13,200	\$880	\$12,540	5/95
JSM, Inc.	08/30/06	\$13,200	\$880	\$12,540	5/95
JSM, Inc.	08/30/06	\$13,200	\$880	\$12,540	5/95

02/21/07 GPL requested termination.

1 Publicly available information suggests that the initial July Quarterly Reports filed by
2 GPL and Carl Romanelli for U.S. Senate may have been accurate. According to press reports,
3 Romanelli began soliciting funds from supporters of former Senator Rick Santorum, the
4 Republican Senate candidate, in June 2006 with the understanding that Romanelli's presence on
5 the general election ballot would "siphon[] votes away from Democratic challenger Bob Casey,

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1 Jr.³ After the Romanelli Committee disclosed \$66,000 in in-kind contributions from GPL, two
2 news articles reported that Romanelli may have violated federal election law by accepting
3 excessive contributions and quoted him as responding, "Do I have a team of lawyers at my
4 disposal? No. We were just trying to honestly disclose where our help came from when, in fact,
5 it was activity of the party and didn't need to be disclosed on the Senate side," and "Obviously
6 we need to talk to a lawyer."⁴ Although GPL and the Romanelli Committee filed amended July
7 Quarterly Reports several weeks later showing coordinated party expenditures on behalf of
8 Romanelli in the amount of \$13,200, Romanelli contradicted these reports in an interview
9 following his removal from the general election ballot, explaining that he had used GPL as a
10 "vessel" to receive funds for his ballot qualification efforts:

11 **CARL ROMANELLI:** Yes, well, the bottom line is that I needed
12 money. I have been trying to fundraise for the Greens for five
13 years, and Democrats and progressives just aren't giving us any. It
14 was my intention to elevate the level of discourse on the issues in
15 this senatorial race. And let's not give Rick Santorum credit.
16 Let's not blame the Green Party. Carl Romanelli put this operation
17 together, and I had the understanding with a handful of Republican
18 friends of mine who helped me that we were both using each other.
19 I needed money, because I had none, and I was well aware that
20 they thought that my presence would help their candidate. I didn't
21 ascribe to that point of view, but it was mutual, because for five
22 years the Green Party of Pennsylvania has been lobbying our
23 legislature for more fair ballot access and for campaign reforms.
24 It's fallen on deaf ears.

25 **AMY GOODMAN:** Carl Romanelli, to be clear, the money went
26 to the [Luzerne] County Green Party, which is not a part of the
27 state Green Party?

28 **CARL ROMANELLI:** Correct. That was another one of the
29 complications. We needed this enormous amount of signatures,
30 and the Pennsylvania Green Party was not even registered as a

³ Daryl Neri, *Republican Bankroll Taints Green Party Hopes*, ALLENTOWN MORNING CALL, Oct. 20, 2006, at B9.

⁴ Carrie Budoff, *Santorum Donors Give to Green Party*, PHILA. INQUIRER, Aug. 1, 2006, at B4; *Romanelli Cash Focus of Attention*, WILKES-BARRE TIMES LEADER, Aug. 2, 2006, at A3.

1 federal party PAC. Initially, I was going to try to raise as much
2 money as I could and turn it over to the state party for the ballot
3 access drive. But without having a vessel to take money for
4 federal candidates, I took it upon myself to use our local, which
5 performed the task normally performed by a state party. And also,
6 all of the money that I collected from the Republican donors did
7 go, as you pointed out, to the Luzerne County Green Party. This
8 didn't go to my campaign. This was solely for ballot access and
9 then later to try to pay for defense of our signatures.⁵

10 Based on publicly available information, the other scenarios reported by GPL in its
11 amended July Quarterly Reports appear less likely. Although GPL's first amended report
12 disclosed the \$66,000 as coordinated party expenditures on behalf of Romanelli and four House
13 candidates, GPL is not a qualified local party committee, and it produced no information in
14 response to the RFAI showing that either the national party committee or a qualified state
15 committee had authorized it to make coordinated party expenditures.⁶ In addition, while GPL
16 reported the \$66,000 in its final amended report as allocable administrative expenses for ballot
17 access, the available information indicates that all of its ballot qualification efforts were on
18 behalf of one or more specific federal candidates.

19 **III. LEGAL ANALYSIS**

20 It is unclear at this time which, if any, of the three July Quarterly Reports filed by GPL
21 accurately reflect its \$66,000 in disbursements. As more fully discussed below, it appears that

⁵ Carl Romanelli Interview by Amy Goodman, DemocracyNow! (Oct. 31, 2006), available at <http://www.democracynow.org/article.pl?sid=06/10/31/150227>. Other publicly available information indicates that Romanelli was in the position to exercise this degree of influence over GPL. For example, the Green Party of Pennsylvania lists Romanelli as the contact person for its Luzerne County affiliate, see *supra* note 1, and Romanelli's campaign biography states that he has served as the Co-Chair of GPL since 2001. See Carl Romanelli for U.S. Senate, Biography, at <http://www.romanelli2006.com/node/3> (last visited Apr. 16, 2007). In addition, GPL and the Romanelli Committee registered with the Commission on the same date and used a common treasurer, Shane Novak, who identified the two committees as affiliated in GPL's amended Statement of Organization.

⁶ Local party committees do not have independent authority to make coordinated party expenditures but may be assigned such authority by a qualified national or state party committee. See 2 U.S.C. § 441a(d)(3); 11 C.F.R. §§ 100.14, 109.33.

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1 each of the three scenarios reported by GPL would have resulted in violations of the Act.⁷ First,
2 if GPL spent the entire \$66,000 on ballot qualification efforts coordinated with Romanelli and
3 his campaign, as publicly available information suggests, GPL made, and the Romanelli
4 Committee knowingly accepted, \$63,900 in excessive in-kind contributions from GPL. Second,
5 if GPL spent the \$66,000 for ballot qualification efforts on behalf of Romanelli and four other
6 Green Party candidates in equal shares of \$13,200 each, GPL may have made excessive in-kind
7 contributions to as many as five candidate committees, depending on whether it coordinated with
8 Romanelli alone or with Romanelli and the other candidates.⁸ Finally, if GPL spent the entire
9 \$66,000 on allocable administrative expenses, rather than for ballot qualification efforts
10 attributable to one or more clearly identified federal candidates, these expenses would have been

⁷ There are a number of ways in which GPL could have made disbursements for ballot qualification efforts on behalf of Romanelli without violating the Act. For example, if GPL had acted independently of Romanelli and his authorized committee, it could have made the \$66,000 in disbursements as independent expenditures. See MUR 5533 (Nader), Statement of Reasons of Commissioners Toner, Mason, Smith and Weintraub (Commission dismissed as a matter of prosecutorial discretion allegations that a state committee made excessive contributions to Nader for President 2004 by collecting and submitting signatures on ballot access petitions because there was no evidence of coordination between the state committee and the Nader campaign and, as a result, the payments were independent expenditures). Alternatively, if GPL acted in coordination with Romanelli and his committee, it could have received written authorization from a qualified state or national party committee to make the \$66,000 in disbursements for ballot access as coordinated party expenditures, assuming such payments were in connection with Romanelli's general election campaign. See 2 U.S.C. § 441a(d)(1); 11 C.F.R. § 109.33(a); cf. AO 1984-11 (Secrette) (determining that payments to collect petition signatures to gain access to the general election ballot are expenditures and, therefore, are qualified campaign expenses, which are expenses made in connection with a candidate's campaign for nomination, under 11 C.F.R. § 9032.9) (cited in AO 2006-20 (Unity 08) (concluding that funds spent to obtain ballot access through petition drives are expenditures and count toward the \$1,000 statutory threshold for political committee status)). Finally, if GPL did not receive authorization to make coordinated party expenditures, it could, as a committee that did not qualify for multicandidate status, have made up to \$2,100 in disbursements for the Committee's ballot access petitions as in-kind contributions. See 2 U.S.C. § 441a(a)(1)(A).

⁸ The four other federal candidates on whose behalf GPL claims to have made coordinated party expenditures in its first amended July Quarterly Report did not file Statements of Organization or register principal campaign committees with the Commission, and there are no disclosure reports other than those filed by GPL showing that any of these candidates received contributions or made expenditures in excess of \$5,000. See Green Party of Luzerne County, Committees Supported and Opposed, at http://query.nictusa.com/cgi-bin/com_supopp/C00424820 (last visited Apr. 23, 2007) (listing coordinated party expenditures of \$4,234 for Dave Baker, \$200 for Greta Brown, \$32,290 for Derf Maitland, and \$4,811 for Titus North between July 3 and September 11, 2006); see also 2 U.S.C. § 431(2). All four of these candidates, however, were on the ballot in the General Election. See 2006 General Election, available at <http://www.electionreturns.state.pa.us> (last visited Apr. 23, 2007).

1 subject to the 50% minimum allocation ratio set forth in 11 C.F.R. § 106.6, not the 5/95 or 15/85
2 federal-nonfederal ratios reported in its second amended July Quarterly Report.

3 **A. EXCESSIVE CONTRIBUTIONS**

4 In its initial July Quarterly Report, GPL disclosed the \$66,000 in disbursements to JSM
5 as expenditures for ballot qualification on behalf of Romanelli. GPL, however, was not a
6 multicandidate or qualified party committee and was subject to a \$2,100 contribution limit
7 during the 2006 cycle. *See* 2 U.S.C. § 441a(a)(1)(A). Because publicly available information
8 indicates that GPL coordinated its ballot qualification activities with Romanelli and his
9 campaign—indeed, Romanelli appears to have solicited and accepted the contributions to GPL
10 specifically for this purpose—these disbursements were not independent expenditures. *See*
11 MUR 5533 (Nader), *supra* n. 7. In addition, as discussed below, GPL was not authorized to
12 make coordinated party expenditures by a qualified national party or state committee. As a
13 result, GPL appears to have made in-kind contributions totaling \$63,900 to the Romanelli
14 Committee.

15 Alternatively, in its first amended July Quarterly Report, GPL reported the \$66,000 as
16 coordinated party expenditures on behalf of Romanelli and four other Green Party candidates in
17 equal shares of \$13,200 each. Had GPL been the subordinate of a qualified party committee or
18 been authorized to make coordinated party expenditures on behalf of a national or qualified state
19 party committee, it could have made coordinated party expenditures on behalf of Romanelli and
20 the four House candidates. *See* 2 U.S.C. § 441a(d).⁹ GPL, however, appears to be a subordinate
21 committee of the GPPA, which has not requested qualification as a state party committee from
22 the Commission. *See* 11 C.F.R. § 100.14; AO 2007-2 (Arizona Libertarian Party). Moreover,

⁹ *See also* 2006 Coordinated Party Expenditure Limits, FEC RECORD, Mar. 2006, at 5-6 available at <http://www.fec.gov/pdf/record/2006/mar06.pdf> (coordinated party expenditure limits were \$761,500 for Pennsylvania Senate candidates and \$39,600 for House candidates).

1 after receiving an RFAI requesting clarifying information about the designating committee,
2 GPL produced no information showing that either the national party committee or a qualified
3 state committee had authorized it to make coordinated party expenditures. As a result, GPL may
4 have made excessive in-kind contributions of \$11,100 each to as many as five candidate
5 committees depending on whether it coordinated its ballot qualification efforts with Romanelli
6 alone or with Romanelli and the other candidates. See 2 U.S.C. § 441a(a)(7)(B).

7 Accordingly, the Commission finds reason to believe that GPL violated 2 U.S.C.
8 § 441a(a)(1) by making excessive in-kind contributions.

9 **B. IMPROPER ALLOCATION**

10 In its second amended July Quarterly Report, GPL reported the \$66,000 on Schedule H4
11 as allocable administrative expenses for ballot access, using a 5/95 or 15/85 federal-nonfederal
12 ratio for each \$13,200 disbursement. Allocation of administrative expenses, however, is limited
13 to disbursements that are not attributable to a clearly identified candidate. See 11 C.F.R.
14 § 106.6(b)(1)(i). As discussed above, statements by Romanelli and GPL's prior disclosure
15 reports suggest that the disbursements were, in fact, for ballot access efforts on behalf of one or
16 more clearly identified candidates. If so, these expenditures were not allocable, and GPL should
17 have used only federal funds to pay for them.¹⁰

18 Even if the disbursements were allocable as administrative expenses, GPL should have
19 allocated using a federal share of at least 50%, not the 5% and 15% federal share disclosed in its
20 second amended July Quarterly Report. See 11 C.F.R. §§ 106.6(a), (c). Furthermore, even if
21 GPL had used the correct ratios, it is not clear how GPL could have, three months after the date
22 of the disbursements, retroactively complied with the requirement that allocable expenditures be

¹⁰ Based on its disclosure reports, GPL accepted contributions only from individuals and in amounts not exceeding \$5,000. See 2 U.S.C. § 441a(a)(1)(C). As a result, it does not appear to have used prohibited or excessive contributions as the result of its improper allocation.

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1 paid for from an allocation account or from the committee's federal account and reimbursed by
2 the nonfederal account. See 11 C.F.R. §§ 102.5 and 106.6(e). Given these facts, it is unclear that
3 the information contained in GPL's second amended July Quarterly Report accurately reflects its
4 activity in that reporting period.

5 Accordingly, the Commission finds reason to believe that Green Party of Luzerne
6 County, PA and Shane Novak, in his official capacity as treasurer, violated 11 C.F.R.
7 § 106.6(b)(1)(i) by improperly allocating administrative expenses attributable to one or more
8 clearly identified federal candidates or, in the alternative, violated 11 C.F.R. §§ 102.5(a),
9 106.6(a), (c), and (e).